

APPEAL NO. 010823

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on March 21, 2001. The hearing officer resolved the disputed issues by determining that the respondent's (claimant) request for spinal surgery should be approved. The appellant (self-insured) has appealed on evidentiary sufficiency grounds. The claimant's response urges our affirmance.

DECISION

A timely appeal not having been filed by the self-insured with the Texas Workers' Compensation Commission (Commission) and the jurisdiction of the Appeals Panel not having been properly invoked, the decision and order of the hearing officer have become final.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on March 29, 2001, under a cover letter of the same date, and that the self-insured's Austin representative signed for the self-insured's copy on that date. Section 410.202(a) provides that a request for appeal shall be filed not later than the 15th day after the date on which the hearing officer's decision is received. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that a request for appeal is presumed to have been timely filed if it is mailed on or before the 15th day after the receipt of the hearing officer's decision and is received by the Commission not later than the 20th day after the date the hearing officer's decision is received. The last day for the self-insured's appeal to have been timely mailed was Friday, April 13, 2001, and the last day for the appeal to have been timely received was Wednesday, April 18, 2001. The envelope containing the self-insured's appeal, which itself is dated April 14, 2001, bears a U.S. Postal Service date stamp reflecting that it was mailed on April 14, 2001, and a Commission date stamp reflecting receipt by the Commission on April 20, 2001. Accordingly, the self-insured's appeal was not timely filed.

The self-insured's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge